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IN THE

Supreme Court of the United States

October Term, 1950.

No. 189

DAVID V. LANSDEN ET AL., *Petitioners,*

v.

WILLIAM W. HART, as United States Attorney for the Eastern District of Illinois, et al., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF.

I.

The principal question involved in this case is inaccurately stated in the brief of the Federal Respondents and tends to divert the Court's attention from the important issues involved.

The question is whether Presidential Proclamations issued pursuant to the Migratory Bird Treaty Act, 16 U. S. C.

704, governing the hunting, etc. of migratory water fowl are subject to judicial review.

The opinion of the U. S. Court of Appeals for the Seventh Circuit holds in the negative. Yet two other U. S. Courts of Appeals have held in the affirmative. *Cerritos Gun Club* v. *Hall*, 96 F. 2d 620 (9 Cir.); *Bailey* v. *Holland*, 126 F. 2d 317 (4 Cir.).

True it is that both those cases were decided prior to the passage of the Administrative Procedure Act, 5 U. S. C. 1001 et seq. However, the primary purpose of such statute was either to broaden judicial review or to codify the existing law on the subject of judicial review. No legislator, proponent, opponent, or court has indicated that the Administrative Procedure Act would narrow existing rights to judicial review. Yet the U. S. Court of Appeals for the Seventh Circuit has interpreted the Act in such manner that the trend culminating in the passage of the Administrative Procedure Act has been reversed and headed in a direction toward administrative immunity from judicial scrutiny.

The Court has never construed the sections of the Administrative Procedure Act involved in this case.

II.

The case law of this country exists for the purpose of announcing binding precedents. Twice the U. S. Court of Appeals for the Seventh Circuit has written opinions in this case. *Lansden* v. *Hart*, 168 F. 2d 409, cert. denied 335 U. S. 858; and *Lansden* v. *Hart* 180 F. 2d 679.

Yet the two opinions are in conflict with each other. The first reviewed the proclamation and (without any evidence in the record upon which to base such findings) found Presidential Proclamation 2748, 12 F. R. 6521 to be reasonable and not arbitrary. The second held that Presidential Proclamation 2748 was unreviewable.

This Court should determine whether either opinion of the U. S. Court of Appeals for the Seventh Circuit is cor-

rect. Until this Court does so determine, practitioners will be confused and uncertain, and additional protracted litigation will undoubtedly result until such time as this Court finally decides the questions herein involved.

III.

The Federal Respondents have been maintaining ever since 1948 that the questions involved in this appeal are moot.

The basis of such contention is that Presidential Proclamation 2748, 12 F. R. 6521 et seq., issued in 1947, has been reenacted annually in 1948 and in 1949 by Presidential Proclamation 2801, 13 F. R. 4411 et seq., and Presidential Proclamation 2848, 14 F. R. 4798 et seq., respectively. An examination of the latter two proclamations will show that Presidential Proclamation 2748 has never been changed or modified and that it is still in effect on the basis of the purported findings of the Fish and Wildlife Service of the Department of Interior for the period prior to June 19, 1947 (R. 13).

Whatever advantage the Federal Respondents hope to gain by their argument that the case is now moot was categorically denied them by Judge Duffy, who wrote the opinion in this case below, when he said at 180 F. 2d 679, at page 684 (R. 66):

> "We have not discussed the question raised that the issues now before us are moot inasmuch as Proclamation 2748 referred only to the 1947 hunting season, and Proclamations 2801 and 2848 applied to the 1948 and 1949 hunting seasons respectively, and that these seasons are now passed. We are of the opinion that certain important fundamental questions were raised by this suit which should be settled at this time, rather than having other actions commenced during subsequent hunting seasons after the publication of regulations pertaining to hunting during such seasons, in order to decide such questions."

The same considerations which impelled the Court below to decide the case are equally valid before this Court.

Respectfully submitted,

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